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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

19 CR 233 (LAK)

5 SIVENDRAN VETTIVETPILLAI,

6 Defendant.

7 -----x

8 New York, N.Y.

9 July 26, 2021

10:30 a.m.

10 Before:

11 HON. SARAH NETBURN,

12 Magistrate Judge

13  
14 APPEARANCES

15 AUDREY STRAUSS

United States Attorney for the

16 Southern District of New York

ANDREW THOMAS

17 ANDREA GRISWOLD

MATTHEW PODOLSKY

18 Assistant United States Attorneys

19 PERRY GUHA, LLP

Attorneys for Defendant

20 SAMIDH GUHA

21 ALSO PRESENT:

Pretrial Services Officer Dayshawn Bostic

22 Special Agent Nicholas Kroll, FBI

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(Via teleconference)

THE COURT: Good morning. This is Judge Netburn.

THE DEPUTY CLERK: Good morning, your Honor. This is the matter of United States v. Sivendran Vettivetpillai, 19 CR 233.

Starting with the government, could you please state your appearance for the record.

MR. THOMAS: Good morning, your Honor. Andrew Thomas, Andrea Griswold and Matthew Podolsky for the United States.

THE COURT: Thank you. On behalf of defense?

MR. GUHA: Good morning, your Honor. Samidh Guha from the law firm of Perry Guha, LLP, on behalf of our client who is on the phone, Mr. Vettivetpillai.

Before we start, Judge, I want to thank both your chambers and the government for all efforts to help make this -- set this up. Mr. Vettivetpillai is in London for these proceedings.

THE COURT: Thank you.

Mr. Vettivetpillai, can you hear me?

THE DEFENDANT: Yes, your Honor.

THE COURT: Okay. Let me just confirm that I understand all of the things that we need to do this morning. I believe that I need to first conduct an initial presentment and an arraignment for the defendant, at which time, if I'm correct that's what I need to do, I assume the defendant will

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1 plead not guilty to the charges in the superseding indictment.  
2 And then we will proceed to the guilty plea, and I believe also  
3 bail needs to be set.

4 Mr. Thomas, is all of that correct?

5 MR. THOMAS: Yes, that is all correct, your Honor.

6 THE COURT: He has not been presented before the court  
7 at all on the superseding indictment?

8 MR. THOMAS: He has not. Mr. Vettivetpillai  
9 surrendered himself to the custody of the United Kingdom on  
10 April 16, 2019, and his formal extradition was requested by the  
11 United States, but today is the first day in this virtual  
12 format that Mr. Vettivetpillai is appearing in a United States  
13 court.

14 THE COURT: So, Mr. Vettivetpillai, we're going to go  
15 through a number of proceedings this morning. We're going to  
16 begin to make sure you understand your rights to appear in  
17 person. Then we're going to proceed to your arraignment. An  
18 arraignment is the time when I'm going to explain to you all of  
19 your initial rights and make sure you understand the charges in  
20 the indictment. And then I'm going to ask you to enter a plea  
21 for purposes of your arraignment. Typically, a defendant  
22 pleads not guilty at that time. I know that you are here today  
23 for the purposes of entering a plea of guilty as to certain  
24 counts in the indictment. But at the arraignment period, it is  
25 typical that a defendant plead not guilty. We'll then proceed

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1 to the plea proceeding, at which time I will indicate to you  
2 that it's my understanding that you wish to change your plea  
3 from not guilty to guilty as to certain counts.

4 Do you understand all of that so far,  
5 Mr. Vettivetpillai?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you need any time to speak with your  
8 lawyer privately before we proceed?

9 THE DEFENDANT: Not necessary right now, your Honor.

10 THE COURT: All right. So let's proceed.

11 First I want to note we are proceeding remotely by  
12 telephone because of the pandemic, and pursuant to the  
13 authority provided under the CARES Act, Section 15002, and the  
14 standing orders of our court, ordinarily, sir, you would have  
15 the right to appear in person before the Court for your initial  
16 presentment, your arraignment as well as your guilty plea  
17 proceeding. But you have the right to waive that in-person  
18 physical appearance and proceed remotely by telephone.

19 Have you spoken with your lawyer about your right to  
20 appear in person?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Have you discussed with him your  
23 willingness to waive that right and to appear before the Court  
24 solely by telephone?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: The Court, Judge Kaplan, has issued an  
2 order indicating that, in light of the pandemic, because of the  
3 interest of justice and the desire to proceed expeditiously,  
4 that this proceeding can go forward remotely either by  
5 telephone or by videoconference, if such videoconference is  
6 reasonably available. I understand that it is not reasonably  
7 available at this time and that we will proceed by telephone.  
8 Is that your understanding as well, sir?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Just for the record, do you in fact  
11 consent to proceed for your initial arraignment and your plea  
12 proceeding by telephone?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: I'll note your consent on the record.

15 Mr. Thomas, I believe you indicated that the defendant  
16 self-surrendered today; is that correct?

17 MR. THOMAS: Your Honor, this proceeding, yes, is  
18 effectively Mr. Vettivetpillai's voluntary appearance in the  
19 United States court system. Originally, he surrendered to  
20 authorities in United Kingdom based on a provisional arrest  
21 warrant that was issued at the request of the United States  
22 there. And that was on April 16, 2019.

23 THE COURT: Thank you.

24 Sir, we're going to begin with your arraignment. So  
25 the purpose of this proceeding is to advise you of certain

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1 rights that you have, inform you of the charges against you,  
2 consider whether counsel need to be appointed for you, and  
3 decide under what conditions, if any, you shall be released.

4 I'm now going to explain certain Constitutional rights  
5 that you have. You have the right to remain silent. You are  
6 not required to make any statements. Even if you've already  
7 made statements to the authorities, you need not make any  
8 further statements. Any statements that you do make can be  
9 used against you. You have the right to be released either  
10 conditionally or unconditionally pending trial, unless I find  
11 that there are no conditions that would reasonably assure your  
12 presence in court or the safety of the community. You have the  
13 right to be represented by an attorney during all court  
14 proceedings, including this one, and during all questioning by  
15 the authorities. If you cannot afford an attorney, I'll  
16 appoint one to represent you. It is my understanding, sir,  
17 that you have retained counsel. If at any point in time you  
18 are unable to afford counsel, you can petition the Court to  
19 have counsel appointed at the government's expense and at no  
20 cost to you.

21 THE DEFENDANT: I understand.

22 THE COURT: Sir -- thank you.

23 You have been indicted in a multi-count indictment. I  
24 want to go over those charges to make sure that you understand  
25 the nature of those charges.

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1           You've been charged in Count One with a racketeering  
2           conspiracy that is alleged to have been conducted from at least  
3           in or about 2014 up to and including April 2018. That's a  
4           violation of Title 18 of the United States Code, Section  
5           1962(d).

6           Count Two charges you with conspiracy to commit  
7           securities fraud from at least in or about 2014 up to and  
8           including April 2018. That's a violation of Title 18 of the  
9           United States Code Section, 371.

10          Count Three charges you with the act of securities  
11          fraud in connection with APEF IV. That is a violation of Title  
12          15 of the United States Code, Sections 78j(b) and 78ff, and  
13          Title 17 of the Code of Federal Regulations, Section 240.10b-5,  
14          and Title 18 of the United States Code, Section 2.

15          Count Four and Five each charge you with securities  
16          fraud from at least in or about 2014 up to and including May of  
17          2018. That's a violation of Title 15 of the United States  
18          Code, Sections 78j(b) and 78ff, and Title 17 of the Code of  
19          Federal Regulations, Section 240.10b-5, and Title 18 of the  
20          United States Code, Section 2.

21          Count Six charges you with conspiracy to commit wire  
22          fraud from at least in or about April 2014 up to and including  
23          in or about May 2018 in violation of Title 18 of the United  
24          States Code, Section 1349.

25          Count Seven charges you with wire fraud in connection

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1 with APEF IV, and that is a violation of Title 18 of the United  
2 States Code, Sections 1343 and 2.

3 Count Eight charges you with the act of wire fraud in  
4 connection with a health care fund. That's a violation of  
5 Title 18, United States Code, Section 1343 and 2.

6 Count Nine charges you with wire fraud in connection  
7 with APEF VI. That's a violation of Title 18, United States  
8 Code, Section 1443 and 2.

9 Count 10 charges you with concealment money laundering  
10 conspiracy. That is a violation of Title 18 of the United  
11 States Code Section 1956(h).

12 Count 11 charges you with concealment money laundering  
13 in violation of Title 18 of the United States Code, Sections  
14 1956(a)(1)(B)(i) and 2.

15 Count 12 charges you with international promotional  
16 money laundering conspiracy, a violation of Title 18 of the  
17 United States Code, Section 1956(h).

18 Count 13 charges you with international promotional  
19 money laundering, a violation of Title 18 of the United States  
20 Code, Sections 1956(a)(2)(A) and 2.

21 Count 14 charges you with conspiracy to defraud the  
22 United States to steal public funds and to steal from employee  
23 benefit plans. That is a violation of Title 18 of the United  
24 States Code, Section 371.

25 And Count 15 charges you with theft of public funds.



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1 That's a violation of Title 18 of the United States Code,  
2 Sections 641 and 2.

3 I believe that is all.

4 Sir, have you received a copy of this superseding  
5 indictment?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Have you had an opportunity to discuss the  
8 charges with your lawyer?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: For purposes of this arraignment only, how  
11 do you plead to the charges?

12 THE DEFENDANT: Not guilty, your Honor.

13 THE COURT: Thank you. So I'll enter a plea of not  
14 guilty as to the charges in the superseding indictment.

15 I understand that the parties have discussed an  
16 appropriate bail package on this case; is that correct?

17 MR. THOMAS: This is Andrew Thomas. Yes, your Honor.  
18 The government proposed, and we understand the defense accepts,  
19 the following proposed bail conditions.

20 THE COURT: Okay.

21 MR. THOMAS: That the defendant be permitted to reside  
22 in the United Kingdom; that he be permitted to travel within  
23 the United Kingdom and to the United States, but no other  
24 travel; that he surrender his travel documents to counsel in  
25 the United Kingdom; that he agree to make no new applications

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1 without notice and permission to pretrial; that he be released  
2 on a personal recognizance bond in the amount of \$10 million to  
3 be partially secured by \$100,000 in cash, and equity in a  
4 residential property which the government understands from  
5 representations by defense counsel is currently approximately  
6 \$678,000. And that further --

7 THE COURT: Sorry. Do you want to put on the record  
8 where the property is?

9 MR. THOMAS: Mr. Guha, would you be able to do that?

10 MR. GUHA: If you can give me one moment. Let me pull  
11 the address up. Unless I can at the end of the conference,  
12 Judge, if that's okay.

13 THE COURT: Sure. I have a couple of addresses here.  
14 I don't know if any of them was the addresses.

15 There is one on Copse Wood Way in Northwood. I don't  
16 know if that's the address. I have an address on Glenthrope  
17 Road. I have one on Queens Gate Terrace. Those are the ones  
18 in the U.K.

19 There is some property in Dubai and a property in Sri  
20 Lanka as well.

21 MR. GUHA: I believe it's the Dubai property.

22 THE DEFENDANT: That is correct, your Honor.

23 THE COURT: So the \$10 million bond is being proposed  
24 to be secured by \$100,000 in cash, and an equity interest in  
25 the property located at Unit 5D3 Limestone House, DIFC, in

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1 Dubai, United Arab Emirates.

2 MR. GUHA: Yes, your Honor.

3 THE COURT: Thank you.

4 Mr. Thomas, anything further?

5 MR. THOMAS: Yes, your Honor. In addition, the bond  
6 would be cosigned by two financially responsible persons. And  
7 the government would agree that the defendant may satisfy these  
8 conditions within the next two weeks.

9 THE COURT: Thank you. Anything to add to that?

10 MR. GUHA: Your Honor, I would just add one thing.  
11 And forgive me if Mr. Thomas already mentioned this. My client  
12 executed a waiver of extradition, to put that issue at rest as  
13 well.

14 THE COURT: Mr. Thomas, are you aware that the waiver  
15 of extradition has been executed?

16 MR. THOMAS: Mr. Guha informed the government of that  
17 last week, your Honor, yes.

18 THE COURT: Okay. All right. Thank you, everybody.

19 In light of my review of the superseding indictment,  
20 and the report from our pretrial services officer and on the  
21 consent of both parties, I am going to approve the proposed  
22 bail package.

23 The defendant will continue to reside in the United  
24 Kingdom, and he will be permitted to travel within the United  
25 Kingdom and to the United States for purposes of appearing in

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1 court, and no other travel. His travel documents need to be  
2 surrendered to his U.K. counsel, and he is prohibited from  
3 making any new travel applications. His bond will be set at  
4 \$10 million, and it's to be secured by \$100,000 in cash and the  
5 property located in the United Arab Emirates, and the bond must  
6 also be cosigned by two financially responsible people and  
7 he'll have until August 9 to satisfy those bond conditions.

8 Let me warn you if you fail to appear in court or if  
9 you violate any of the conditions of your release, a warrant  
10 will be issued for your arrest, and you and anyone who signed  
11 the bond will be responsible for paying the full amount, \$10  
12 million, and you may also be charged with a separate crime of  
13 bail jumping. In addition, if you commit an offense while you  
14 are released, you may be subject to a more severe punishment  
15 than you would receive if you had committed the offense at any  
16 other time.

17 Mr. Vettivetpillai, we have now completed the initial  
18 proceeding for this case. You have been arraigned on the  
19 indictment, and we've set your bail. We are now going to move  
20 forward to the plea proceeding.

21 Are you prepared to move into that proceeding or do  
22 you need time to speak with your lawyer?

23 THE DEFENDANT: I'm fine, your Honor, to move forward.

24 THE COURT: All right. Okay. Let me just make a  
25 request. I am going to be speaking mostly with the defendant.

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1 So if I can ask that everybody else on the line mute their  
2 phones. We have a little bit of background static which makes  
3 it difficult for the court reporter.

4 Sir, we have already gone through your consent. I  
5 just want to confirm again that you have consented to continue  
6 with this proceeding and enter a guilty plea to certain charges  
7 by appearing by telephone; is that correct, sir?

8 THE DEFENDANT: That is correct, your Honor.

9 THE COURT: In addition, I have before me a consent to  
10 proceed before a United States magistrate judge on a felony  
11 plea allocution that you have signed. What this form says is,  
12 knowing you have the right to have this plea taken by a United  
13 States district judge, you are agreeing to have this plea taken  
14 by me, a United States magistrate judge.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Before you signed this form, did you  
18 discuss it with your lawyer?

19 THE DEFENDANT: Yes, I did, your Honor.

20 THE COURT: As we have discussed, you have been  
21 charged in a superseding indictment.

22 Mr. Thomas, can I just ask you, I know that the  
23 defendant is pleading guilty to many of the counts but not all  
24 of them. Are all of the counts to which the defendant intends  
25 to plead guilty, those counts he was charged in? Are there

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1 other counts he is not pleading guilty to but that he is  
2 charged in?

3 MR. THOMAS: Your Honor, the agreement reached by the  
4 parties contemplates that Mr. Vettivetpillai will plead guilty  
5 to a subset of the counts in which he is charged.

6 Particularly, he'll plead guilty to Counts One, Two, Four,  
7 Five, Six, Eight, Nine, 14, and 15. But not the other counts  
8 in which he is named.

9 THE COURT: Okay. I notice he was not named in Count  
10 16 for instance. Is he named in Count Three?

11 MR. THOMAS: Yes, your Honor. He is named in Count  
12 Three and Count Five, and I think practically speaking those  
13 are the two that he is charged in but is not being required to  
14 plead guilty to, pursuant to the agreement.

15 THE COURT: The agreement that I have indicates that  
16 he is going to be pleading guilty to Count Five. Is that not  
17 correct?

18 MR. THOMAS: I'm sorry, your Honor. Count Seven. My  
19 mistake.

20 THE COURT: All right.

21 Mr. Vettivetpillai, I want to go over briefly those  
22 counts to which you have been charged and which I understand  
23 you intend to change your plea and enter a plea of guilty.

24 It is my understanding that you intend to enter a  
25 guilty plea as to Count One, which charges you with

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1 racketeering conspiracy; Count Two, which charges you with  
2 conspiracy to commit securities fraud; Counts Four and Five,  
3 which charges you with the act of securities fraud; Count Six,  
4 which charges you with conspiracy to commit wire fraud; Count  
5 Eight, which charges you with the act of wire fraud; Count  
6 Nine, which also charges you with the act of wire fraud; Count  
7 14, which charges you with conspiracy to defraud the United  
8 States; and Count 15, that charges you with theft of public  
9 funds.

10 It is my understanding that you wish to change your  
11 plea as to those counts and to enter a plea of guilty. Is that  
12 correct, sir?

13 THE DEFENDANT: That is correct, your Honor.

14 THE COURT: Before deciding whether to accept your  
15 guilty plea, I'm going to ask you certain questions. It is  
16 very important that you answer these questions honestly and  
17 completely. The purpose of these proceedings is to make sure  
18 that you understand your rights, to decide whether you are  
19 pleading guilty of your own free will, and to make sure that  
20 you're pleading guilty because you are guilty and not for some  
21 other reason.

22 Do you understand what I'm saying?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: If you don't understand any of my  
25 questions or if you want an opportunity to speak with your

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1 lawyer, please say so, because it is important that you  
2 understand every question before you answer. Will you do that?

3 THE DEFENDANT: Yes, I will.

4 THE COURT: Ms. Slusher, can you please swear in the  
5 defendant.

6 (Defendant sworn)

7 THE DEPUTY CLERK: Could you please state your full  
8 name for the record.

9 THE DEFENDANT: Sivendran Vettivetpillai.

10 THE COURT: Thank you, sir.

11 You understand that you are now under oath, and if you  
12 answer any my questions falsely, you can be prosecuted for  
13 perjury?

14 Sir, how old are you?

15 THE DEFENDANT: 54.

16 THE COURT: Am I correct that you are not a citizen of  
17 the United States?

18 THE DEFENDANT: You're right, I'm not a citizen of the  
19 United States.

20 THE COURT: What countries are you a citizen of?

21 THE DEFENDANT: I'm a citizen of United Kingdom and  
22 Sri Lanka.

23 THE COURT: Sir, do you understand that as a result of  
24 your conviction, that it is likely that you will face  
25 immigration consequences in the United States, including that



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1 you may be prohibited from entering the United States in the  
2 future, and you may be prohibited from being naturalized as a  
3 United States citizen?

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand that you will have no  
7 right to withdraw your guilty plea based on any actual or  
8 perceived adverse immigration consequences resulting from that  
9 plea and conviction?

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor, I do understand that.

12 THE COURT: In your plea agreement, which we will  
13 discuss in more detail later, you are agreeing that you will  
14 not challenge your conviction or sentence on direct appeal or  
15 through a motion often called a habeas motion, based on any  
16 actual or perceived adverse immigration consequences.

17 Do you understand that?

18 THE DEFENDANT: I do understand that, your Honor.

19 THE COURT: Sir, how far did you go in school?

20 THE DEFENDANT: Graduate degree.

21 THE COURT: I assume you can read English.

22 THE DEFENDANT: Yes, I can.

23 THE COURT: Are you currently or have you recently  
24 been under the care of a doctor or a psychiatrist for any  
25 reason?

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1 THE DEFENDANT: No, I'm not.

2 THE COURT: Have you taken any mind-altering drugs,  
3 medicine or pills or consumed any alcohol in the last 24 hours?

4 THE DEFENDANT: No, I have not, your Honor.

5 Can I just answer the previous question that you  
6 asked? Can you ask the previous question again, please.

7 THE COURT: I asked whether you were currently or  
8 recently under the care of a doctor or a psychiatrist for any  
9 reason.

10 THE DEFENDANT: I am under -- I have a heart problem  
11 and diabetes, so I'm under medication and the review of the  
12 cardiologist.

13 THE COURT: Does that condition prevent you from  
14 understanding what's going on in today's proceeding?

15 THE DEFENDANT: No, it does not.

16 THE COURT: Does it prevent you from answering my  
17 questions honestly and truthfully?

18 THE DEFENDANT: No, it does not prevent me.

19 THE COURT: Let me just ask the same question with  
20 respect to any medication you're taking for your heart  
21 condition. Does that medication interfere with your ability to  
22 understand today's proceeding or to answer my questions  
23 honestly?

24 THE DEFENDANT: No, it does not.

25 THE COURT: Thank you.

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1 Is your mind clear today?

2 THE DEFENDANT: Yes, it is, your Honor.

3 THE COURT: Do you understand what's happening in this  
4 proceeding?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: Does the government have any objection to  
7 the defendant's competence to enter a guilty plea at this time?

8 MR. THOMAS: No, your Honor.

9 THE COURT: And Mr. Guha, do you have any objection to  
10 the defendant's competence to enter a guilty plea at this time?

11 MR. GUHA: No, your Honor, not at all.

12 THE COURT: Sir, have you received a copy of the  
13 written version of the charges against you in this case, known  
14 as the indictment?

15 THE DEFENDANT: Yes, your Honor, I have.

16 THE COURT: Have you read it?

17 THE DEFENDANT: Yes, I have.

18 THE COURT: Do you understand what it says?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: You have the right to have this indictment  
21 read to you in open court. Would you like me to read the  
22 indictment to you?

23 THE DEFENDANT: Not necessary, your Honor.

24 THE COURT: As we've discussed, you are charged in  
25 multiple counts for racketeering conspiracy, conspiracy to

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1 commit securities fraud and wire fraud, the acts of securities  
2 fraud and wire fraud, as well as conspiracy to defraud the  
3 United States and the theft of public funds.

4 Do you understand all that?

5 THE DEFENDANT: Yes, your Honor, I do.

6 THE COURT: Have you had time to talk with your  
7 attorney about these charges and about how you wish to plead?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Has he told you the consequences of  
10 pleading guilty?

11 THE DEFENDANT: Yes, he has.

12 THE COURT: Are you satisfied with your attorney's  
13 representation of you?

14 THE DEFENDANT: Yes, I am satisfied.

15 THE COURT: Mr. Vettivetpillai, I'm now going to  
16 explain certain Constitutional rights that you have. These are  
17 rights you will be giving up if you enter a guilty plea.  
18 Please listen carefully to what I'm about to say, and if you  
19 don't understand something, please stop me and your attorney or  
20 I will explain the matter more fully. Okay?

21 THE DEFENDANT: Okay.

22 THE COURT: Under the Constitution and the laws of the  
23 United States, you have the right to plead not guilty to the  
24 charges contained in this indictment.

25 Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: If you pled not guilty, you would be  
3 entitled under the Constitution to a speedy and public trial by  
4 a jury of those charges. At that trial you would be presumed  
5 innocent, and the government would be required to prove you  
6 guilty beyond a reasonable doubt before you could be found  
7 guilty. That means you would not have to prove that you are  
8 innocent, and you would not be convicted unless a jury 12  
9 people agreed unanimously that you are guilty beyond a  
10 reasonable doubt.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: If you decided to go to trial, at that  
14 trial and at every stage of your case, you would have the right  
15 to be represented by an attorney. As I stated earlier, if you  
16 cannot afford an attorney, an attorney would be appointed to  
17 represent you at the government's expense and at no cost to  
18 you. If you retained a defense counsel and ran out of money,  
19 an attorney could be appointed to continue to represent you.  
20 When an attorney is appointed, that attorney is appointed to  
21 handle your case all the way through trial, and not just for a  
22 guilty plea. So your decision to plead guilty should not  
23 depend on whether you can afford to hire an attorney.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: During a trial, the witnesses for the  
2 prosecution would have to come to court and testify in your  
3 presence where you could see and hear them and your lawyer  
4 could cross-examine those witnesses. If you wanted, your  
5 lawyer could offer evidence on your behalf. You would be able  
6 to use the Court's power to compel witnesses to come to court  
7 to testify in your defense, even if they did not want to come.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor, I do understand that.

10 THE COURT: At a trial you would have the right to  
11 testify in your own defense if you wanted to, but you would  
12 also have the right not to testify, and if you chose not to  
13 testify, that cannot be used against you in any way. No  
14 inference or suggestion of guilt could be made from the fact  
15 that you did not testify.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: If you are convicted at trial, you would  
19 have the right to appeal that verdict to a higher court.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: As I said before, you have the right to  
23 plead not guilty. Even right now, even as you sit here today  
24 for the purposes of entering a guilty plea, you have the right  
25 to change your mind, persist in your not guilty plea, and

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1 proceed to trial. But if you did plead guilty and I accept  
2 your plea, you will give up a trial and all of the other rights  
3 that I have just described. If you plead guilty, there will be  
4 no trial. All that will remain to be done will be to impose a  
5 sentence. You and the government will have a chance to make  
6 arguments about what that sentence should be, but there will  
7 not be any further trial to determine whether you are guilty or  
8 not guilty of the charges to which you pled guilty.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor, I do.

11 THE COURT: Do you understand that the decision as to  
12 the appropriate sentence in your case will be entirely up to  
13 the sentencing judge, and that that judge will be limited only  
14 by what the law requires? This means that even if you are  
15 surprised or disappointed by your sentence, you will still be  
16 bound by your guilty plea.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Finally, if you do plead guilty, you are  
20 also giving up your right not to incriminate yourself, and I  
21 will ask you questions about what you did in order to satisfy  
22 myself that you are actually guilty. By pleading guilty you  
23 will be admitting to your factual as well as your legal guilt.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: You already said earlier that you read the  
2 indictment and you understand the charges against you. What  
3 I'm going to do now is to ask the United States attorney to  
4 state the elements of each of the charges to which you've  
5 indicated you intend to plead guilty. The elements are the  
6 things that government would have to prove beyond a reasonable  
7 doubt if the case were to proceed to trial.

8 Mr. Thomas, why don't you proceed.

9 MR. THOMAS: Yes, your Honor.

10 With respect to Count One, the racketeering  
11 conspiracy, the government would be required to prove:

12 First, that the enterprise alleged in the indictment  
13 existed; second, that the enterprise affected interstate or  
14 foreign commerce; third, that the defendant was associated with  
15 or employed by the enterprise; and fourth, that the defendant  
16 knowingly and willfully conspired with at least one other  
17 person to participate in the conduct of the affairs of the  
18 enterprise through a pattern of racketeering activity, meaning  
19 that a member of the conspiracy would commit at least two  
20 predicate acts.

21 Here, the indictment alleges at paragraph 107 the  
22 categories of relevant predicate acts, which include acts  
23 involving fraud in the sale of securities, acts relating to  
24 embezzlement from pension and welfare funds, acts related to  
25 wire fraud, acts relating to financial institution fraud, and



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1 acts relating to the laundering of monetary instruments.

2 With respect to Count Two, the securities fraud  
3 conspiracy, the government would be required to prove:

4 First, that two or more persons entered the unlawful  
5 agreement charged in the indictment; second, that the defendant  
6 knowingly and willfully became a member of the conspiracy;  
7 third, that one of the members of the conspiracy knowingly  
8 committed at least one of the overt acts charged in the  
9 indictment; and fourth, that at least one overt act was  
10 committed to further some objective of the conspiracy.

11 Here the indictment alleges at paragraph 117 the  
12 relevant overt acts.

13 With respect to Counts Four and Five, which allege  
14 substantive security fraud, the government would be required to  
15 prove:

16 First, in connection with the purchase or sale of the  
17 securities, the defendant did any one or more of the following:

18 Employed a device, scheme or artifices to defraud, or  
19 made an untrue statement of a material fact or omitted to state  
20 a material fact which made what was said under the  
21 circumstances misleading, or engaged in an act, practice or  
22 course of business that operated or would operate as a fraud or  
23 deceit upon a purchaser or seller;

24 Second, that the defendant acted willfully, knowingly  
25 and with the intent to defraud; and

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1 Third, that the defendant knowingly used or caused to  
2 be used any means or instruments of transportation or  
3 communication in interstate or foreign commerce or the use of  
4 the mails in furtherance of the fraudulent conduct.

5 With respect to Count Six, the wire fraud conspiracy,  
6 the government would be required to prove:

7 First, that such a conspiracy existed; and second,  
8 that the defendant knowingly and intentionally became a member  
9 of that conspiracy.

10 With respect to Counts Eight and Nine, which charge  
11 substantive wire fraud, the government would be required to  
12 prove:

13 First, that there was a scheme or artifice to defraud  
14 or to obtain money or property by materially false and  
15 fraudulent pretenses, representations, or promises; second,  
16 that the defendant knowingly and willfully participated in the  
17 scheme or artifice to defraud with knowledge of its fraudulent  
18 nature and with the specific intent to defraud; and third, that  
19 in the execution of the scheme, the defendant used or caused  
20 the use of interstate or foreign wires such as telephone calls,  
21 e-mails, or the transmission of money through the use of wire  
22 transfers.

23 With respect to Count 14, which alleges the conspiracy  
24 to defraud the United States, the government would be required  
25 to prove:

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1 First, that two or more persons entered the unlawful  
2 agreement charged in the indictment; second, the defendant  
3 knowingly and willfully became a member of the conspiracy;  
4 third, that one of the members of the conspiracy knowingly  
5 committed at least one overt act charged in the indictment; and  
6 fourth, that at least one overt act was committed to further  
7 some objective of the conspiracy.

8 With respect to Count 14, the relevant overt acts are  
9 alleged at paragraph 150 of the indictment.

10 Finally, for Count 15, which alleges the theft of  
11 public funds, the government would be required to prove:

12 First, that money or property described in the  
13 indictment belonged to the United States government or one of  
14 its agencies; second, that the defendant stole or embezzled or  
15 knowingly converted that property; third, that the defendant  
16 acted knowingly and willfully with the intent to deprive the  
17 government the use and benefit of its property; and four, that  
18 the value of the property was greater than 1,000.

19 In addition, the government would be required by a  
20 preponderance to establish the appropriate venue.

21 THE COURT: Thank you.

22 Sir, I'm now going to tell you the maximum possible  
23 penalties for these crimes. The maximum means the most that  
24 could possibly be imposed. It does not necessarily mean that  
25 this is what you will receive. But you need to understand that

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1 by pleading guilty here today, you are exposing yourself to the  
2 possibility of receiving any combination of punishments up to  
3 the maximum that I'm about to describe.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: First I'm going to tell you about the  
7 possible restrictions on your liberty. I'm going to go over  
8 each count with respect to conditions of imprisonment and  
9 supervised release.

10 First let me explain to you that supervised release  
11 means that if you are sentenced to prison, and thereafter  
12 released from prison, you may be subject to supervision by the  
13 probation department. You should understand that if you are  
14 placed on supervised release, and thereafter violate any of the  
15 terms or conditions of that release, you may be subject to  
16 revocation of your supervised release and returned to prison  
17 without getting any credit for the time that you spent out on  
18 supervised release.

19 So with respect to restrictions on your liberty, Count  
20 One carries a maximum sentence of imprisonment of 20 years, and  
21 a maximum term of supervised release of three years.

22 Count Two carries a maximum sentence of imprisonment  
23 of five years, and a maximum term of supervised release of  
24 three years.

25 Counts Four and Five each carry a maximum sentence of

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1 imprisonment of 20 years, and a maximum term of supervised  
2 release of three years.

3 Count Six carries a maximum sentence of imprisonment  
4 of 20 years, and a maximum term of supervised release of three  
5 years.

6 Count Eight carries a maximum sentence of imprisonment  
7 of 20 years, and a maximum term of supervised release of three  
8 years.

9 Count Nine carries a maximum sentence of imprisonment  
10 of 20 years, and a maximum term of supervised release of three  
11 years.

12 Count 14 carries a maximum sentence of imprisonment of  
13 five years, and a maximum term of supervised release of three  
14 years.

15 And Count 15 carries a maximum sentence of  
16 imprisonment of 10 years, and a maximum term of supervised  
17 release of three years.

18 This means that the total maximum sentence of  
19 incarceration on all counts, if you were to receive the maximum  
20 for each count and they were to run consecutively, would be 145  
21 years of imprisonment.

22 In addition to these terms of imprisonment, the  
23 possible penalties also include certain financial penalties.  
24 I'm going to go over each of the financial penalties that you  
25 face. Many of them are similar, but they are each individually

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1 applicable.

2 With respect to each of the following counts, Count  
3 One, Count Two, Count Six, Count Eight, Count Nine, Count 14,  
4 and Count 15, for each of these counts, the maximum possible  
5 penalty is the greatest of \$250,000 or twice what was made by  
6 the criminal activity or twice what was lost by someone other  
7 than yourself as a result of the criminal activity.

8 Counts Four and Five each carry a maximum possible  
9 fine of the greatest of \$5 million or twice what was made by  
10 the criminal activity or twice what someone other than yourself  
11 lost because of the criminal activity.

12 In addition, for each count of conviction, there is a  
13 mandatory special assessment of \$100 that must be imposed, as I  
14 said, for each count of conviction.

15 Sir, has anybody threatened you or coerced you in any  
16 way to get you to plead guilty?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Has anyone, other than the prosecution,  
19 and solely by way of the prosecution's plea agreement, offered  
20 you anything or promised you anything to get you to plead  
21 guilty?

22 THE DEFENDANT: No, your Honor, no one has.

23 THE COURT: As I just referenced, there is an  
24 agreement between you and the government concerning this plea;  
25 is that correct?

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1 THE DEFENDANT: That is correct, your Honor.

2 THE COURT: Have you read this agreement?

3 THE DEFENDANT: Yes, I have.

4 THE COURT: Have you discussed it with your lawyer?

5 THE DEFENDANT: Yes, I have, your Honor.

6 THE COURT: Did you sign the agreement?

7 THE DEFENDANT: Yes, I did, your Honor.

8 THE COURT: Did you read it and discuss it with your  
9 lawyer before you signed it?

10 THE DEFENDANT: Yes, your Honor, I did.

11 THE COURT: I want to go over some of the terms in  
12 this plea agreement. In this plea agreement, it is understood  
13 that you will be ordered to make restitution in an amount  
14 ordered by the Court.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: In addition, in this plea agreement you  
18 are admitting to the forfeiture allegations with respect to  
19 Count One of the indictment, and you've agreed to forfeit to  
20 the United States an interest that was acquired or maintained  
21 as a result of the racketeering activity charged in Count One.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: In addition, you are admitting to the  
25 forfeiture allegations with respect to Counts Two, Four through

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1 Six, Eight, Nine, 14 and 15, and that you've agreed to forfeit  
2 to the United States any and all real property, real or  
3 personal property that constitutes or is derive from the  
4 commission of the offenses alleged in Counts Two, Four through  
5 Six, Eight, Nine, 14 and 15.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: As we discussed earlier in this agreement,  
9 you understand that as a result of your conviction and  
10 sentence, that you may face serious adverse immigration  
11 consequences in the United States?

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Have you discussed those possible  
15 immigration consequences with your counsel?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Okay. Do you understand that you may be  
18 prohibited from legally entering the United States as a result  
19 of your conviction?

20 THE DEFENDANT: Yes, I am aware of that, yes, your  
21 Honor.

22 THE COURT: Have you discussed that with a lawyer?

23 THE DEFENDANT: Yes, yes.

24 THE COURT: You understand that you may be prohibited  
25 from becoming a naturalized United States citizen because of



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1 this conviction?

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor, I do.

4 THE COURT: Do you understand that you'll have no  
5 right to withdraw this guilty plea based on any actual or  
6 perceived immigration consequences that result from the guilty  
7 plea and conviction?

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor, I do.

10 THE COURT: As I stated earlier, you've agreed in this  
11 plea agreement that you won't challenge your conviction or  
12 sentence on direct appeal or through any collateral challenge,  
13 sometimes called a habeas petition, habeas motion, based on any  
14 actual or perceived immigration consequences.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor, I do.

17 THE COURT: In addition, I understand that this plea  
18 agreement refers to the possibility that the government may  
19 advise the sentencing judge by letter that you've given the  
20 government substantial cooperation which could lead to the  
21 reduction in your potential prison sentence.

22 Do you understand that this plea agreement does not  
23 absolutely require that the government submit such a letter?

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor, I do.

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1 THE COURT: And that the government may freely choose  
2 not to submit a letter based on its assessment of your  
3 compliance with the plea agreement and the extent of your  
4 cooperation.

5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: You would still be bound by your plea,  
8 bound by your plea agreement and by your guilty plea today,  
9 regardless of the government's decision about whether to file a  
10 letter on your behalf.

11 Do you understand all that?

12 THE DEFENDANT: Yes, your Honor I do.

13 THE COURT: We discussed previously the possible  
14 maximum punishment available under the statutes and the crimes  
15 that you are intending to plead guilty to. I want you to  
16 understand that those terms are advisory, and that the judge  
17 who sentences you will be required to conduct a calculation  
18 under the sentencing guidelines which are advisory, meaning not  
19 mandatory, and then impose a sentence based on what he believes  
20 is the appropriate sentence for you.

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And that you will not be permitted to  
24 withdraw your guilty plea based on the sentence that is  
25 imposed. Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: In determining that sentence, the Court  
3 will consider, in addition to the guidelines, and any  
4 departures from those guidelines, all of the factors that are  
5 set forth in our sentencing statute, which you can find at  
6 Title 18 of the United States Code, Section 3553(a). Those  
7 factors include the nature and circumstances of the offense and  
8 the history and characteristics of you, the defendant. The  
9 need for the sentence imposed, the kinds of sentences that are  
10 available, the sentencing range provided under the guidelines,  
11 the need to avoid sentencing disparities and the need to  
12 provide restitution to victims. In addition, the Court will  
13 consider the presentence report which will be prepared by the  
14 probation department in advance of your sentencing. Before you  
15 are sentenced, you and the government will have an opportunity  
16 to challenge the facts that are reported by the probation  
17 officer.

18 Do you understand all of that, sir?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Sir, now that you have been advised of the  
21 charges against you and the possible penalties that you face  
22 and all of the rights that you will be giving up, is it still  
23 your intention to plead guilty to the various counts within  
24 this indictment?

25 THE DEFENDANT: Yes, your Honor. That's my intention.

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1 THE COURT: Okay. I am going to go through each of  
2 the counts and ask how you plead.

3 With respect to the Count One for racketeering  
4 conspiracy, how do you plead?

5 THE DEFENDANT: Guilty.

6 THE COURT: With respect to Count Two for conspiracy  
7 to commit securities fraud, how do you plead?

8 THE DEFENDANT: Guilty.

9 THE COURT: With respect to Count Four for securities  
10 fraud, the act of securities fraud, how do you plead?

11 THE DEFENDANT: Guilty.

12 THE COURT: With respect to Count Five, which also  
13 charges you with the act of securities fraud, how do you plead?

14 THE DEFENDANT: Guilty.

15 THE COURT: With respect to Count Six, which charges  
16 you with conspiracy to commit wire fraud, how do you plead?

17 THE DEFENDANT: Guilty.

18 THE COURT: With respect to Count Eight, which charges  
19 you with the act of wire fraud, how do you plead?

20 THE DEFENDANT: Guilty.

21 THE COURT: With respect to Count Nine, which also  
22 charges you with the act of wire fraud, how do you plead?

23 THE DEFENDANT: Guilty.

24 THE COURT: With respect to Count 14, which charges  
25 you with conspiracy to defraud the United States, how do you

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1 plead?

2 THE DEFENDANT: Guilty.

3 THE COURT: And finally, with respect to Count 15,  
4 which charges you with theft of public funds, how do you plead?

5 THE DEFENDANT: Guilty.

6 THE COURT: Thank you, sir.

7 Can you tell me in your own words what you did that  
8 makes you believe that you are guilty of these charges in the  
9 indictment.

10 MR. GUHA: Your Honor, it is Mr. Guha. May I state  
11 one thing at the outset that will be brief?

12 THE COURT: Yes.

13 MR. GUHA: Your Honor, sometimes it is easier to do an  
14 overall allocution as to opposed to count by count, and we and  
15 Mr. Vettivetpillai's other attorneys have worked to craft an  
16 allocution that covered all of the counts. And we based it,  
17 tailoring it to his circumstances, on a similar type of  
18 allocution that occurred in this case and was accepted earlier  
19 in this litigation.

20 So, with the Court's permission, that's how we would  
21 intend to proceed, subject to the Court's review, of course.

22 THE COURT: Thank you. I'm happy to proceed in that  
23 fashion. And then I will turn my inquiry to the government in  
24 the first instance to ask whether or not the government is  
25 satisfied with the allocution with respect to each of the

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1 relevant counts and whether there are any specific followup  
2 inquiries that they request I make.

3 MR. GUHA: Thank you.

4 THE COURT: Thank you. All right.

5 Mr. Vettivetpillai, I understand that you have prepared a  
6 written remark. To the extent you are going to be reading to  
7 that, I will remind you to please speak slowly.

8 THE DEFENDANT: Yes, your Honor. If I'm going too  
9 fast, please ask me to slow down.

10 May I start, your Honor?

11 THE COURT: Please.

12 THE DEFENDANT: From April 2016 to March 2018, I  
13 worked for Abraaj Capital Dubai Limited, a private equity firm  
14 headquartered in Dubai that invested in companies based in  
15 emerging markets. I joined Abraaj after it merged with Aureos  
16 Capital Limited in July 2012, where I had worked for 12-plus  
17 years, and had most recently served as CEO. The merger came  
18 about after I first met Abraaj's founder and CEO, Arif Naqvi,  
19 in 2011, at which time he told me he was interested in a merger  
20 because Abraaj was looking to expand into emerging markets  
21 where Aureos was a respected and established firm.

22 During the due diligence for the merger, Arif and  
23 others at Abraaj made representations to me and others at  
24 Aureos that Abraaj was in good financial health and had a  
25 strong balance sheet. We also inspected Abraaj's books and

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1 records. The due diligence appeared to confirm Arif's  
2 representations that Abraaj had ample liquidity and very little  
3 debt.

4 From April 2017, one of my Dubai-based partners began  
5 to confide in me that Abraaj's financial condition was not as  
6 strong as Arif had led me to believe. For example, the partner  
7 told me that Abraaj was experiencing serious liquidity issues,  
8 specifically to finance its commitments to the funds, and it  
9 was facing regular shortfalls on its balance sheet. The  
10 partner confiding in me about Abraaj's troubled financial  
11 position had direct access to those records, which I did not.  
12 I believed that what the partner was telling me about Abraaj's  
13 troubled financial position was true.

14 In a one-on-one meeting with Arif on April 21, 2017, I  
15 demanded greater visibility into Abraaj's financial condition  
16 and immediate changes in the firm's governance to provide  
17 transparency. When Arif refused, I told him that I was  
18 resigning from the firm and would find other employment before  
19 year end, and gave my formal written notice on December 4,  
20 2017. For the reasons I will explain now, your Honor, my  
21 greatest regret is that I did not leave Abraaj that day.

22 In the days that followed, I continued to hear from  
23 the partner that Abraaj was engaged in wrongful conduct.  
24 Specifically, I was told that Abraaj as an enterprise was  
25 engaged in activities to disguise financial improprieties with

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1 the intent to mislead both existing and prospective investors.  
2 I understood that Abraaj members routinely communicated with  
3 investors, both existing and prospective, and likely misled  
4 them through these means. I should have raised these concerns  
5 with other members of Abraaj, including the board, to take  
6 immediate action to investigate. I also believed, based on my  
7 interactions with other members of Abraaj, that Abraaj's  
8 financial improprieties implicated certain of the public funds  
9 that Abraaj accepted.

10 While I took no affirmative steps to manipulate  
11 Abraaj's books and records or otherwise conceal the misconduct,  
12 I did not promptly advise either the board or all investors --  
13 again, existing or prospective -- of my concerns. I recognize  
14 that my silence added to the misperception that other Abraaj  
15 members were advancing about the state of Abraaj's financial  
16 well being. My silence to many investors, as a senior member  
17 of Abraaj, delayed serious external inquiry into these issues.

18 When it became clearer to me in February 2018 that  
19 misappropriation of investor funds had in fact occurred, I  
20 advised the board and all investors to whom I had access. I  
21 appreciate now that I should have raised my concerns earlier.

22 Although my efforts to confirm whether what I was  
23 hearing from the Abraaj partner was true was met with  
24 resistance by Arif and others, in hindsight, I admit that I  
25 could and should have done more to keep pushing for the truth



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1 and to alert all investors to what I was hearing. I owed all  
2 Abraaj's investors a duty of candor and disclosure, and I  
3 breached that duty by not doing more to ensure that they had  
4 the same information I had about financial instability and  
5 potential misconduct at Abraaj between May 17, 2017, and  
6 February 5, 2018.

7 I compromised the integrity of my judgment, and for  
8 that I am disappointed with myself and very sorry. I do accept  
9 full responsibility for my role in what happened, and I will  
10 regret it for the rest of my life.

11 That's my allocution, your Honor.

12 THE COURT: Thank you. Let me turn to the government  
13 and ask if you believe that allocution was sufficient for each  
14 of the counts or whether there is a specific question you'd  
15 like me to ask.

16 MR. THOMAS: Thank you, your Honor. Forgive me if I  
17 missed it in Mr. Vettivetpillai's recitation. I heard  
18 Mr. Vettivetpillai discuss his decision to knowingly remain  
19 silent when he became aware of misconduct at Abraaj. I did not  
20 hear him say that he agreed with others to enable that  
21 misconduct going forward. Perhaps inquiry with respect to his  
22 mental state in that regard would clear up the record.

23 THE COURT: Thank you.

24 Mr. Vettivetpillai, if I can ask you, the government  
25 has requested to speak to your engagement in the activity that

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1 was going on, not just that you were silent, but whether you in  
2 fact were in agreement with the conduct.

3 THE DEFENDANT: Your Honor, could I speak to my  
4 counsel on this, your Honor?

5 MR. GUHA: Your Honor, in anticipation that there may  
6 be -- there may arise a moment when we need to communicate, if  
7 it suits the Court, I established a separate phone line so I  
8 can answer any questions, if that's the best way the Court  
9 would like to proceed.

10 THE COURT: Sure. That's probably easiest. So I'm  
11 fine with that.

12 MR. GUHA: So I will and Mr. Vettivetpillai will hit  
13 mute.

14 THE COURT: Very well. So we'll take a brief recess  
15 while we're waiting for you.

16 MR. GUHA: Great. Thank you, your Honor.

17 (Pause)

18 MR. GUHA: This is Samidh and Mr. Vettivetpillai is  
19 unmuting as well so I think we can proceed, and again, thank  
20 you for everyone's patience.

21 THE COURT: Mr. Vettivetpillai, are you here?

22 THE DEFENDANT: Yes, your Honor. I'm here.

23 Should I respond to the government's point, please?

24 THE COURT: Please.

25 THE DEFENDANT: So, during that period that I

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1 described, I was in regular communications with the Abraaj  
2 partner who alert me to the financial improprieties. Over the  
3 course -- over the course of that communication, it was  
4 understood between us that I had not elevated and was not  
5 elevating his concerns to the Abraaj board, among others. That  
6 is fair to say.

7 THE COURT: So, just to be clear, it sounds like  
8 although you may not agree that you -- you may not state that  
9 you agreed with their conduct, you were aware of what was  
10 happening, and it was known to others that you knew what was  
11 happening, and you were intentionally not stopping it or taking  
12 action that was would have prevented the criminal activity.

13 Is that a fair statement?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Mr. Thomas, is that satisfactory?

16 MR. THOMAS: Your Honor, the government is concerned  
17 that it is not satisfactory, because a number of the charges  
18 require Mr. Vettivetpillai to acknowledge his intent to  
19 defraud, whether that's agreeing with another person in sharing  
20 the intent and object of the conspiracy or on the substantive  
21 count independently.

22 We would propose, whatever the Court prefers, either  
23 that we perhaps have a direct conversation with Mr. Guha about  
24 our understanding of the elements, or if that would not be  
25 productive in Mr. Guha's judgment, perhaps recessing entirely

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1 this conference and scheduling it to continue another day.

2 THE COURT: Is that a conversation that you all can  
3 have now?

4 MR. THOMAS: The government --

5 MR. GUHA: Yes, your Honor. From my perspective, we  
6 could have that conversation now.

7 THE COURT: All right. Tell me how you all want to  
8 proceed. I don't know if it is a conversation that you can go  
9 off the record and you can sort of speak in open court or we  
10 can take advantage of the line that counsel just used to speak  
11 with his client. How do you want to proceed?

12 MR. THOMAS: Your Honor, I believe I have Mr. Guha's  
13 cell phone number. So I will just try him directly on a  
14 separate line. That way we don't burden the public and  
15 everyone else with the conversation.

16 THE COURT: Okay. So we'll take another brief recess  
17 so you all can speak.

18 MR. THOMAS: Thank you, your Honor.

19 (Pause)

20 MR. THOMAS: This is Andrew Thomas on behalf of the  
21 government.

22 THE COURT: Yes.

23 MR. THOMAS: After speaking to Mr. Guha, I think it  
24 probably would be most efficient and respectful of the Court's  
25 time for us to fully adjourn the proceeding, and for the

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1 parties to reach back out to chambers for a continuation date  
2 when appropriate.

3 THE COURT: Okay. What does that mean for purposes of  
4 what we've already been through? We had an hour long plea  
5 proceeding.

6 MR. GUHA: Your Honor, I think it means that if we can  
7 keep this proceeding open, we wouldn't have to redo all the  
8 hard work that's already been put into this. The narrow  
9 question here is, there is things that the government had  
10 suggested they would like, some points they would like the  
11 allocution to hit.

12 And just so the Court is aware, the only reason we  
13 didn't discuss this previously, the allocution, is the  
14 government had some concerns about seeing -- about any  
15 perception that they were shaping the allocution, which would  
16 never happen because Mr. Vettivetpillai is both independent and  
17 represented by outside counsel.

18 But, in light of some of what I view as their very  
19 minor points that they raised with his allocution, I would like  
20 to just ensure the opportunity to talk to Mr. Vettivetpillai  
21 without the time pressure and make sure he is completely  
22 comfortable. I do believe they're minor, and I don't think if  
23 we regroup it will take terribly long.

24 If the Court deems it appropriate, we certainly would  
25 take the view that everything that the Court has already

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1 conducted in this proceeding could carry over. But again,  
2 that's just my take on it.

3 THE COURT: Do you have a sense of the timing? Do you  
4 have a sense of when we would be able to reconvene?

5 MR. GUHA: I think if I get off the phone, when we  
6 adjourn this conference, I would speak with Mr. Vettivetpillai  
7 immediately. And depending on the Court, obviously, we can  
8 meet as early as later today, and I don't mean very late. Also  
9 given the time differences with London, but within an hour or  
10 two, depending on the Court's schedule.

11 THE COURT: Just confirming my schedule which of  
12 course I don't know. But I think we can probably reconvene, I  
13 think, subject to my deputy telling me I'm wrong, at 2 p.m.  
14 today.

15 MR. GUHA: I think that would be sufficient for us.

16 MR. THOMAS: The government is available at that time,  
17 your Honor.

18 THE COURT: All right. So let's reconvene at 2 p.m.  
19 I'll have my deputy resend the phone number just in case, but I  
20 assume it is the same number we're calling in on.

21 MR. GUHA: Thank you again for all of the Court's  
22 indulgences today. We really appreciate it.

23 THE COURT: My pleasure. I'll speak to you all in  
24 about two hours. All right. We are at recess.

25 MR. THOMAS: Thank you, your Honor.

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1 (Recess)

2 THE COURT: It's Judge Netburn.

3 THE DEPUTY CLERK: Good afternoon, your Honor.

4 MR. GUHA: Good afternoon, your Honor.

5 THE COURT: Good afternoon, everybody. It's Judge  
6 Netburn. I'll just note for the record that it's now  
7 2 o'clock. We took an adjournment a little before noon on the  
8 East Coast so that counsel could have an opportunity to speak  
9 in more detail with his client.

10 So, Mr. Guha, why don't I turn it to you at this  
11 point.

12 MR. GUHA: Your Honor, again, thank you for the  
13 Court's patience and indulgence. We've had a chance to speak  
14 with the government, as well as a chance to speak independently  
15 with my client, and I think he is prepared to just supplement  
16 his allocution in a way that I think the government views as  
17 being acceptable to satisfy the elements of his plea, as do I.  
18 Obviously subject to your Honor's consideration.

19 THE COURT: Thank you. Let's begin.

20 MR. GUHA: So would you like to cover the additional  
21 piece of the allocution that we discussed during this period.

22 THE DEFENDANT: Yes. All right. Thank you, your  
23 Honor.

24 The additional points to support my allocution are,  
25 with respect to each of the counts to which I am pleading

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1 guilty, I communicated regularly with at least one other member  
2 of Abraaj regarding the financial improprieties. While we did  
3 not have a formal agreement, we mutually understood that  
4 investors would be misled by our course of action. We intended  
5 by this course of action that the enterprise would be able to  
6 continue to raise funds from the investors. I continued along  
7 this path for several months before I finally went to the board  
8 in February 2018.

9 Specifically as to the U.S. public funds invested in  
10 Abraaj, I do not know the specific amount invested in the  
11 enterprise, but I understood that any investment accepted by  
12 Abraaj was well in excess of 1,000 U.S. dollars.

13 Thank you, your Honor.

14 THE COURT: Thank you. I appreciate that additional  
15 allocution and confirmation that you were communicating with at  
16 least one other individual, and knew that the nature of your  
17 conduct was intended to mislead investors and would in fact do  
18 so.

19 Let me turn to Mr. Thomas and ask whether that is a  
20 sufficient allocution at this time.

21 MR. THOMAS: Yes, your Honor. The government believes  
22 that addresses the concern that we raised before.

23 THE COURT: Thank you. Any other questions you'd like  
24 me to ask Mr. Vettivetpillai?

25 MR. THOMAS: Nothing from the government, your Honor,



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1 no.

2 THE COURT: Thank you. And do you want to proffer  
3 what evidence the government has that would establish guilt  
4 beyond a reasonable doubt at trial.

5 MR. THOMAS: Yes, your Honor. And in doing so, I'll  
6 touch on venue and that will also mention wires, so hopefully  
7 satisfy all the various issues we have in front of us.

8 From the government's perspective, as described in the  
9 indictment, the government is prepared to prove at trial that  
10 Mr. Vettivetpillai joined with others at Abraaj to defraud  
11 existing and prospective investors around the world, including  
12 investors and prospective investors located in the United  
13 States.

14 The fraudulent conduct at Abraaj centered around the  
15 misappropriation of investor funds and on the misvaluation of  
16 Abraaj's performance in past funds in order to attract new  
17 investments.

18 The government is prepared to prove  
19 Mr. Vettivetpillai's knowing participation in these schemes  
20 through e-mail, instant messages, bank account records,  
21 investor agreements, marketing materials, and witness  
22 testimony.

23 Those records and testimony would reflect that Abraaj  
24 used investor funds to cover liquidity shortfalls, used new  
25 investor funds to cover existing investment commitments, and

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1 delayed promised investments because the funds had been spent  
2 improperly on other uses.

3 Abraaj also solicited investments in a new fund, APEF  
4 VI, using falsely inflated performance data about its prior  
5 fund. Abraaj personnel, including Mr. Vettivetpillai,  
6 concealed and misled investors about the use of their funds in  
7 marketing materials during investment presentations and in  
8 investor updates. At least one of the victimized investors was  
9 a U.S. agency, and its public funds were misappropriated by  
10 Abraaj during the course of the scheme.

11 Finally, the government would establish venue and  
12 jurisdiction by showing Abraaj had an office in Manhattan. The  
13 defendant and his co-conspirators sent e-mail messages to and  
14 from the district, and the presence of wire transfers of funds  
15 to and from the district occurred over the course of the  
16 conspiracy.

17 THE COURT: All right.

18 Mr. Vettivetpillai, based on your responses to my  
19 questions, I find you are competent to enter a guilty plea. I  
20 am satisfied you understand your rights, including your right  
21 to go to trial, that you are aware of the consequences of your  
22 plea, including the sentence that may be imposed, and the  
23 possible immigration consequences in connection with the United  
24 States that may result, that you are voluntarily pleading  
25 guilty, and that you have admitted that you are guilty as

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1 charged in Count One, Two, Four, Five, Six, Eight, Nine, 14 and  
2 15.

3 So I will recommend to District Judge Kaplan that he  
4 accept your plea of guilty as to those counts of the  
5 indictment, and I'll direct the government order a copy of the  
6 transcript and submit it to Judge Kaplan so he may act on my  
7 recommendation.

8 Do the parties want a control date at this point?

9 MR. THOMAS: Sure, your Honor. Yes, that may be  
10 orderly.

11 THE COURT: Is six months appropriate?

12 MR. THOMAS: Yes, your Honor.

13 THE COURT: We will set a control date for January 26.  
14 I suppose I should hold off on ordering a presentence report as  
15 well. Does that make sense?

16 MR. THOMAS: From the government that makes sense.

17 THE COURT: So I'll not order that a presentence  
18 report be prepared until further request from the government.  
19 And I will remind the defendant that he is now on bail  
20 conditions, we set those earlier this morning. All the bail  
21 conditions that I set earlier this morning continue to apply.  
22 Even though you've now entered a guilty plea as to the charges,  
23 I'll remind you a violation of those bail conditions can have  
24 very serious consequences, including revocation of bail,  
25 prosecution for bail jumping. In addition, if you violate

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1 those conditions, in addition to possible prosecution for any  
2 crimes, it may result in the government revoking your  
3 cooperation agreement.

4 Anything further from the government?

5 MR. THOMAS: Nothing further from the government, your  
6 Honor. Thank you, and thank you for accommodating us.

7 THE COURT: You're very welcome.

8 Anything further from defense?

9 MR. GUHA: I do have one request, your Honor, and if  
10 it is not appropriate for now, I can discuss with the  
11 government offline. Given the nature of the agreement with the  
12 government regarding his plea, could we request that the  
13 transcript be sealed?

14 THE COURT: Ordinarily I would request that sort of  
15 application is made in writing. I'll grant the request orally  
16 on an interim basis, and direct that the court reporter hold --  
17 I think the plea proceeding portion should be under seal. I  
18 don't know if there is any reason why the arraignment needs to  
19 be placed under seal. Do you agree with that?

20 MR. GUHA: I do agree with that, your Honor. We can  
21 memorialize this after the fact as well.

22 THE COURT: So I'm going to grant the oral request to  
23 place the plea proceedings under seal, and direct that the  
24 parties submit a written submission for my consideration.

25 Anything further, counsel?

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1 MR. GUHA: Other than to thank the Court again for its  
2 indulgence.

3 THE COURT: Thank you, everybody. We are adjourned.

4 (Adjourned)